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The Honorable James A. Goeke

7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF WASHINGTON

9 TYANNA AVERETT,

10 Plaintiff,

11 v.

12 KADLEC REGIONAL MEDICAL
CENTER,

13 Defendant.
14
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16
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No. 4:23-CV-05082-JAG

DEFENDANT'S STATEMENT OF
MATERIAL FACTS NOT IN
DISPUTE IN SUPPORT OF ITS
MOTION FOR SUMMARY
JUDGMENT

HEARING DATE: FEBRUARY 3,
2025
WITHOUT ORAL ARGUMENT

18 Pursuant to Local Civil Rule 56(c)(1), Defendant Kadlec Regional Medical
19 Center provides the following Statement of Material Facts Not In Dispute in
20 support of its Motion for Summary Judgment, concurrently filed.

21 **A. Kadlec Regional Medical Center**

22 1. Kadlec's nursing staff is unionized. The Washington State Nurses
23 Association is the collective bargaining representative for all regular full-time,
24 part-time, and per diem Registered Nurses employed at Kadlec's facilities.
25 Declaration of Rosemary Alito ("Alito Decl."), filed herewith, ¶ 9, Ex. H.
26

1 2. Among the many services that Kadlec provides to the Richland
2 community is its Birth Center. The Birth Center provides antepartum, labor and
3 delivery, and postpartum care. Overall management of the nurses assigned to the
4 Birth Center is the responsibility of the Nurse Manager. Deposition of Trinity
5 Mugo (“Mugo Dep.”) 29:7-14.¹

6 3. At all times relevant to this lawsuit, Trinity Mugo served as the Birth
7 Center’s Nurse Manager. Prior to becoming Nurse Manager in 2018, Ms. Mugo
8 spent seven years as a nurse on the unit and three years as the unit’s assistant nurse
9 manager. Mugo Dep. 8:6-24.

10 4. The shift-to-shift operation of the Birth Center is overseen by assigned
11 “charge” or “lead” nurses. The charge nurse, for example, is responsible for
12 creating nursing assignments for each shift. Mugo Dep. 29:19-31:4.

13 5. While not all nurses that work on the unit are trained to provide care
14 for laboring patients, those nurses that are trained to do so are expected to provide
15 care for patients in all areas of the unit, including antepartum and postpartum
16 patients. Mugo Dep. 29:19-25.

17 **B. Kadlec’s Policies, Procedures, and Collective Bargaining**
18 **Agreement**

19 6. The 2019-2022 Collective Bargaining Agreement between Kadlec and
20 WSNA states:

- 21 • “The first ninety (90) calendar days of employment for fulltime nurses and the
22 first one hundred and eight (180) calendar days of employment for part-time
23 and per diem nurses shall be an Introductory Status period. After either ninety
24 (90) or one hundred and eighty (180) calendar days of continuous employment,

25 ¹ Cited portions of the Deposition of Trinity Mugo are attached to the Declaration
26 of Rosemary Alito, filed herewith, as Exhibit A.

1 as applicable, the nurse shall be considered a regular employee unless
2 specifically advised by the Hospital in writing. The Introductory Status may be
3 extended for not more than ninety (90) calendar days.” Alito Decl. ¶ 9, Ex. H
4 § 4.1

- 5 • “A standard work day shall consist of eight (8), ten (10), or twelve (12) hours
6 work to be completed within eight and one-half (8 ½), ten and one-half (10 ½),
7 or twelve and one-half (12 ½) consecutive hours, respectively, with a thirty (30)
8 minute meal period on the nurse’s own time if the nurse is relieved of duties
9 during this time. If the nurse is not relieved of duties or may not leave the unit
10 for the meal period this shall be paid time. Nurses working eight (8) or ten (10)
11 hour workdays shall receive two (2) fifteen (15) minute rest breaks spaced
12 appropriately apart. Nurses working twelve (12) hour shifts shall receive three
13 (3) fifteen (15) minute breaks spaced appropriately apart.” *Id.* at §§ 5.1-5.2.

14 7. Kadlec’s Licensure, Registration, and Certification policy states:

- 15 • “Caregivers occupying job classifications requiring Washington State licensure,
16 registration or certification must maintain a current license, etc. as required by
17 the job class and applicable state law.” Alito Decl. ¶ 10, Ex. I at 1 (License,
18 Registration, Certification policy)
- 19 • “It is the responsibility of the caregiver to ensure compliance of the required
20 professional credential during the entire period of employment. It is the
21 responsibility of the core leader to ensure caregivers are not permitted to work
22 if a required credential is not valid, verified or otherwise in good standing in
23 accordance with this policy.” *Id.*
- 24 • “For the purpose of this policy, required credentials are those listed on the job
25 descriptions.” *Id.*
- 26 • “It is the caregivers’ responsibility to complete the renewal process in a timely
manner.” *Id.* at 2.

- 1 • “For expiration’s that occur when a caregiver is on an approved leave of
2 absence, the Core Leader must be able to verify tracking tool an acceptable
3 documentation before the caregiver returns to work. Renewal must be verified
4 prior to the caregivers’s return.” *Id.*
- 5 • “The Caregiver is responsible for maintaining valid credentials as required by
6 the job description, regulatory agencies and/or law regardless of whether or not
7 they have received reminders of upcoming expiration’s from Evercheck.” *Id.*
- 8 • “If the license, certification, or registration has not been renewed, caregivers
9 will be removed from the work schedule until the verification process is
10 completed. Caregivers who do not maintain or renew required license,
11 certification or registration are subject to the disciplinary process up to and
including termination.” *Id.* at 3.

12 8. Kadlec’s Separation of Employment policy states:

- 13 • “Caregivers may choose to voluntarily separate from their employment at any
14 time. A written notice (hard copy or by email) which states the effective date of
15 the separation as well as the reason for the separation should be sent to the
16 caregiver’s core leader.” Alito Decl. ¶ 11, Ex. J at 1 (Separation of Employment
policy)
- 17 • “Non-exempt caregivers are expected to give 14 to 21 calendar days of written
18 notice for voluntary separation.” *Id.*
- 19 • “Core leaders have the discretion to release the caregiver from work duties
20 during the notice period. In consultation with human resources, the facility
21 reserves the right to accept a resignation and recognize the separation date as
22 any date it chooses between the date the resignation is submitted and the date
23 designated by the caregiver as the last day of employment.” *Id.*

24 9. Kadlec’s Meal and Break Periods policy states:

- 25 • “In keeping with our mission and values, the facility encourages all caregivers
26 to take appropriate meal and break periods during the workday. In addition, it is

1 the policy for the facility to comply with all applicable laws concerning meal
2 and break periods.” Alito Decl. ¶ 12, Ex. K at 1 (Kadlec’s Meal and Break
3 Periods policy).

- 4 • “A caregiver who works more than 5 hours in a regular shift is entitled to at
5 least one 30-minute unpaid and uninterrupted meal period to be taken between
6 the second and fifth hours of work.” *Id.*
- 7 • “To ensure that the meal period is uninterrupted, caregivers beginning a meal
8 period should hand over any phone/pager/duties to the relief person or utilize
9 another arrangement specific to the unit. If caregivers anticipate any
10 interruption in their meal period, they should speak with their core leader in
11 advance of the meal period to determine if assistance can be provided.” *Id.*
- 12 • “The mealtime is unpaid as long as a caregiver is free from any duties for the
13 entire meal period. The caregiver may be required to remain on the work site
14 during an unpaid meal break as long as no work is performed or expected be
15 performed during this time.” *Id.*
- 16 • “Meal times must be compensated whenever caregivers are: 1. Required or
17 allowed to remain on duty; 2. Required to remain on-call with the expectation
18 they will return to duty if called or paged, regardless of whether there is actually
19 a call or page; or 3. Called back to work during the meal period even if not
20 normally on call during this time.” *Id.* at 2
- 21 • “Caregivers who are RNs ... and who are engaged in patient care and the
22 delivery of clinical services to patients, will be provided a paid 15-minute rest
23 break for each four hours of working time, which must be continuous and
24 uninterrupted. If a rest break is interrupted, caregivers must take a new
25 continuous 15-minute rest break.” *Id.*
- 26 • “Caregivers are expected to return on time from meal periods and breaks as
well as to take breaks and meal periods as described in this policy.” *Id.* at 3.

- 1 • “Caregivers who are unable to take their break or meal periods must notify their
2 core leader or designated charge/lead promptly so that the core leader can
3 reschedule the break/meal period or otherwise ensure that the caregiver receives
4 proper compensation.” *Id.*
- 5 • “In the event of a missed meal or break period, the caregiver is to notify their
6 core leader in accordance with departmental procedures and at the end of shift,
7 attest to the missed meal period or break(s) in the facility’s timekeeping
8 system.” *Id.*
- 9 • “Caregivers not following this policy may be subject to corrective or
10 disciplinary action, up to and including termination.” *Id.*

11 10. Kadlec’s Release of Caregiver Information policy states:

- 12 • “All requests for information regarding former or current caregivers must be
13 directed to human resources. Requests for letters of recommendation must also
14 be directed to human resources.” Alito Decl. ¶ 13, Ex. L at 2 (Kadlec’s Release
15 of Caregiver Information policy).
- 16 • “For former caregivers, prospective employers can obtain the following
17 information upon request and receipt of an authorization form: 1. Last Position
18 Held 2. Dates of Employment (hire date and separation date) 3. FTE Status.” *Id.*

19 **C. Plaintiff’s Employment with Kadlec**

20 11. In late 2018, Kadlec sought applicants for a .45 full-time equivalent
21 night shift nursing position in its Birth Center. The .45 full-time equivalent
22 position works three twelve-hour shifts every two weeks. Mugo Dep. 10:14-11:14.

23 12. Ms. Mugo served as the hiring manager for the .45 full-time
24 equivalent night shift nursing position. Ms. Mugo specifically sought an
25 experienced nurse to fill the open position. Mugo Dep. 10:14-12:16.

26 13. Following an application and interview process, Ms. Mugo decided to
hire Plaintiff, and Kadlec extended Plaintiff an offer of employment for this .45

1 full-time equivalent night shift nursing position in October 2019. Alito Decl. ¶ 14,
2 Ex. M (October 2019 offer letter); Mugo Dep. 12:8-16.

3 14. Plaintiff worked in Kadlec's Birth Center from January 21, 2019, to
4 November 4, 2021. *See* Alito Decl. ¶ 19, Ex. S (Plaintiff's Time Detail Records).

5 15. New part-time caregivers at Kadlec are subject to a 180-day
6 introductory period. During that period, the caregiver's performance is evaluated
7 through a series of "check ins" with the caregiver's manager. Alito Decl. ¶ 9, Ex. H
8 § 4.1; Mugo Dep. 19:11-20:2.

9 16. Ms. Mugo met with Plaintiff twice during her introductory period,
10 once in May and once in July 2019, to discuss Plaintiff's performance. Ms. Mugo
11 documented discussing concerns that had been raised with her regarding Plaintiff's
12 ability to follow Kadlec's policies and procedures. In turn, Ms. Mugo documented
13 that Plaintiff raised concerns she had with "team dynamics" and feeling that "she is
14 under a microscope." Mugo Dep. 21:16-24:19; Alito Decl. ¶ 15, Ex. N
15 (Introductory Performance and Development Form).

16 17. Following the July 2019 meeting, Ms. Mugo extended Plaintiff's
17 introductory period. The introductory period was initially extended until August
18 16, 2019, but was again extended to November 2019 when Plaintiff went out on
19 leave in August 2019. Plaintiff's introductory period officially concluded on
20 November 28, 2019. *See* Alito Decl. ¶ 15, Ex. N (Introductory Performance and
21 Development Form); Mugo Dep. 27:2-11.

22 18. Ms. Mugo completed two additional evaluations of Plaintiff's
23 performance prior to her resignation, one in March 2020 and one in April 2021. In
24 both evaluations, Ms. Mugo documented that Plaintiff was "meeting the
25 expectations of the role" and affirmed that Plaintiff had not been subject to
26 corrective action or placed on a performance improvement plan during the relevant

1 review period. Alito Decl. ¶ 16, Ex. O (2020 Performance and Development
2 Form); *id.*, ¶ 17, Ex. P (2021 Performance and Development Form).

3 19. During her employment, Plaintiff took two medical leaves of absence.
4 In September 2019, Plaintiff took a two-month leave of absence, returning to work
5 in late November 2019. Then, in early January 2021, Plaintiff took a second
6 medical leave of absence, which lasted approximately five months. Alito Decl.
7 ¶ 18, Ex. Q (2019 Sedgwick Claim Letter); *id.*, Ex. R (2021 Sedgwick Claim
8 Letter).

9 20. Kadlec uses Sedgwick, a third-party vendor, to administer its
10 caregiver leave programs. Alito Decl. ¶ 18, Exs. Q, R.

11 21. In 2019, Sedgwick approved Plaintiff for short-term disability leave
12 but informed Plaintiff that she did not qualify for FMLA leave as she did not meet
13 FMLA's "12 month length of service requirement." *See* Alito Decl. ¶ 18, Ex. Q
14 (2019 Sedgwick Leave Letter).

15 22. At the time of Plaintiff's leave in 2019, Plaintiff had been employed
16 by Kadlec for approximately 9 months. *See* Alito Decl. ¶ 18, Ex. Q; *see also id.*
17 ¶ 19, Ex. S (Plaintiff's Time Detail Records).

18 23. In 2021, Sedgwick approved Plaintiff for short-term disability leave
19 but informed Plaintiff that she did not qualify for FMLA leave as she did not meet
20 "FMLA's 1250-hours worked requirement." Alito Decl. ¶ 18, Ex. R (2021
21 Sedgwick Leave Letter).

22 24. At the time of Plaintiff's leave in 2021, Plaintiff had worked less than
23 700 hours at Kadlec during the past year. Alito Decl. ¶ 18, Ex. R; *see also id.* ¶ 19
24 Ex. S (Plaintiff's Time Detail Records).

25 25. While Plaintiff was on leave in 2021, Plaintiff's Basic Life Support
26 ("BLS") certification expired. Deposition of Tyanna Averett ("Averett Dep."),

120:8-122:3; *see also* Alito Decl. ¶ 20, Ex. T (Evercheck notification regarding expired certification).² Nurses in the Birth Center are required to maintain active BLS certifications as a requirement of their position. Alito Decl. ¶ 10, Ex. I; *see also id.*, ¶ 23, Ex. X (Mugo email regarding certification).

26. On May 22, 2021, the Birth Center's assistant nurse manager, Michelle Bunger, texted Plaintiff the following:

- "Thanks Tyanna! It might be good to come in during the day of the 1, 2, or 3rd. Get caught up on health stream, QStream, ect. To confirm I have you working the 4-5-6 and 11-12-13 for the next schedule starting tomorrow. Thanks again."

Alito Decl. ¶ 21, Ex. U at 3 (Ms. Bunger's texts with Plaintiff).

27. On June 7, 2021, Ms. Bunger texted Plaintiff the following:

- "Hello were you able to catch up on your q streams? They are going to start suspending people soon."

Id. at 1 (Ms. Bunger's texts with Plaintiff).

28. On June 25 and July 6, 2021, the Birth Center's training coordinator, Tereisa Pleyo provided Plaintiff with information regarding how to complete Plaintiff's BLS certification renewal via email. *See* Alito Decl. ¶ 22, Exs. V, W (Ms. Pleyo's emails regarding BLS certification).

29. On July 26, 2021, Ms. Mugo emailed Plaintiff regarding her BLS certification. In that email, Ms. Mugo stated:

- "I have confirmed with HR when you returned from your leave you should have completed the BLS prior to returning to the floor to take care of patients. You are required to catch up on HES, and Qstreams when you missed while on leave as soon as you return."

² Cited portions of the Deposition of Tyanna Averett are attached as Exhibit B to the Declaration of Rosemary Alito.

- 1 • “Today is Monday 7/26/2021 and I am officially moving you into unpaid time/
2 suspension until this is completed. You are not allowed to use PTO while in
3 suspension unpaid time.”
- 4 • “That being said the shift you have worked without a current BLS have been
5 paid and you have one shift on this current pay period that will be paid. Any
6 remaining shift that you miss if you are unable to complete you BLS prior to
7 Friday 7/30/2021 will be unpaid.”

8 Alito Decl. ¶ 23, Ex. X (Ms. Mugo’s July 26, 2021, email to Plaintiff).

9 30. On July 29, 2021, Ms. Mugo emailed Plaintiff regarding her BLS
10 certification. In that email, Ms. Mugo stated:

- 11 • “I have texted you today to see if you have completed the training as of 1525 on
12 7/29/2021 it appears you have not accessed the assigned HES for the BLS Heart
13 Code. I reviewed Evercheck and I do not see a new BLS uploaded.”
- 14 • “This email is to notify you if you do not complete the required BLS training by
15 Monday 8/2/2021 4pm your employment MAY be terminated. I want to
16 reiterate and I have included the emails that we notified you with 1st on 6/25,
17 phone call on 7/21, email on 7/22, phone call and email on 7/26. It is the
18 caregivers responsibility to maintain their certification and licenses in a timely
19 manner, you have been back from leave since 6/3/2021 working with an expired
20 BLS, this places the organization in jeopardy.”

21 Alito Decl. ¶ 23, Ex. Y at 1-2 (Ms. Mugo’s July 29, 2021, email to Plaintiff).

22 31. On July 26, 2021, Plaintiff was placed into unpaid time/ suspended
23 status pending the renewal of her BLS certification. While in “unpaid time/
24 suspended” status, Plaintiff missed previously scheduled shifts on July 30, July 31,
25 and August 1, 2021. Alito Decl. ¶ 23, Ex. X, Y; *id.* ¶ 19, Ex. S (Plaintiff’s Time
26 Detail Records); Averett Dep. 122:2-126:20.

32. Plaintiff submitted proof of a renewed BLS certification to Kadlec on

1 August 2, 2021, and was returned to the work schedule. Alito Decl. ¶ 18, Ex. Y at
2 1 (Plaintiff's August 2, 2021 email).

3 33. Plaintiff did not work her scheduled shift on August 9, 2021, as she
4 had not received notice from Kadlec that she was allowed to return to work prior to
5 the start of that shift. Averett Dep. 178:11-179:16.

6 34. Plaintiff grieved her suspension through WSNA, arguing that she
7 should have been provided time upon her return from leave to complete her
8 recertification during her scheduled working hours. Averett Dep. 177:20-179:16;
9 Alito Decl. ¶ 24, Ex. Z (Plaintiff's Step 1 Grievance Form)

10 35. WSNA pursued the grievance to Step 2, but did not elevate it further
11 after Kadlec agreed to pay Plaintiff for the shift she missed on August 9, 2021, and
12 confirmed that Plaintiff (1) would be paid for the time spent completing her
13 education requirements, and (2) had not received any "documented discipline" for
14 failing to complete the recertification process in a timely manner. Alito Decl. ¶ 24,
15 Exs. AA, BB, CC (Step 1 Response, Step 2 Grievance Form, Step 2 Response).

16 36. On September 15, 2021, Ms. Mugo requested to meet with Plaintiff to
17 discuss "some patient care and time and attendance concerns I have from the
18 following shifts. 8/23, 9/11, 9/12." Alito Decl. ¶ 6, Ex. E (Emails regarding
19 October 1 Meeting).

20 37. This meeting was scheduled for October 1, 2021, and was attended by
21 Ms. Mugo, an HR representative from Kadlec, Plaintiff, and Plaintiff's union
22 representative. Alito Decl. ¶ 6, Ex. E (Emails regarding October 1 Meeting);
23 Averett Dep. 190:6-18; Mugo Dep. 47:24-48:5.

24 38. Plaintiff testified that she "finally unleashing [her] emotions" at Ms.
25 Mugo during the October 1, 2021, meeting. Averett Dep. 190:6-18.

26 39. Four days later, on October 5, Plaintiff sent Ms. Mugo a formal

1 resignation letter, providing notice that she intended for her last day to be
2 November 5, 2021. Alito Decl. ¶ 25, Ex. DD (Plaintiff's Resignation Letter).

3 40. In her four-page resignation letter addressed to Ms. Mugo, Plaintiff
4 stated the following:

- 5 • "You pulled me into your office after I had only been working here for 4
6 months and proceeded to tell me how much I don't amount to much. You
7 questioned and highly doubted me that I truly have this type of experience. You
8 belittled me through so many words and questioned my entire career
9 experience. You truly DO NOT KNOW who I am. For as hard as I have worked
10 in all these years and the countless people I have touched, both patients,
11 coworkers, doctors, providers, techs, etc., I was in shock! Friends and family
12 and especially my L&D family from all over were in shock for not only how
13 you treated me that day but for even stating such belittling, disqualifying, and
14 devaluing who I was as a person. Nobody deserve to be bullied like that
15 EVER!" Alito Decl. ¶ 25, Ex. DD at 2 (Plaintiff's Resignation Letter).
- 16 • "I turned to a few people here in the unit because I needed strength to move
17 forward only to learn that this behavior was very typical of you to all the new
18 nurses that entered Kadlec. That if I would just hold on, things would start to be
19 better after I had endured it for about two years. This is defined as a form of
20 hazing." *Id.* at 3.
- 21 • "From this day, you have not ceased to find one fault after another with me.
22 You have questioned my honesty and integrity for which I wrote down perfect
23 notes of time knowing very well I would hear from you later. I stand proud to
24 defend my name and honor my character. Always have and will continue to do
25 so. Never was anything positive and uplifting. We have not had many
26 encounters since this traumatic day 2 years ago. I do not trust you with my
emotional well-being." *Id.* at 3.
- "Between the leadership, lack of professionalism, poor morale, and just no
genuine love shared amongst all, this environment is left to be toxic. Patients

1 are seeing this. Staff from all over the hospital are noticing this about our unit.
2 Such a sad and unfortunate situation. I pray for the benefit of all that people
3 start to listen and feel the hearts from all those that stand with me in how we all
4 feel working here. Kadlec has some AMAZING nurses on this unit. Many of
5 which are not fully happy in this environment and are just surviving. They have
6 spoken words of understanding, feelings of empathy, and admit that this is a
toxic environment.” *Id.* at 4.

- 7 • “I constantly work in fear of retaliation from those that I should have a trusting
8 relationship with such as you and the other leaders of this unit. Not only has the
9 fear evolved and intensified throughout the time I have worked here, but many
10 of us are treated with disrespect and unfairness. I have been a labor nurse for all
11 these years and yet my success and failure lays in the hands of girls that have no
12 idea the damage they are doing one shift to another. Many of us are stuffed into
a corner of postpartum or even antepartum solely on the segregation of
popularity.” *Id.*

13 41. The following day, Ms. Mugo accepted Plaintiff’s resignation and
14 informed Plaintiff that, pursuant to Kadlec’s separation policy, Plaintiff’s
15 resignation would be effective on November 4, 2021. Alito Decl. ¶ 26, Ex. EE
16 (October 2021 emails between Ms. Mugo and Plaintiff).

17
18 **D. Plaintiff’s Meal and Rest Breaks**

19 42. Regarding rest and meal breaks, Plaintiff testified:

- 20 • “I remember a couple times I went up to a couple – like day shift charge nurses
21 because the night shift charge nurse had left or – it was like 30 minutes before
22 our shift was over and I would say, Just so you know, I haven’t got a lunch
23 today. And they’re like what? What? And I was like, uh, yeah, but there hasn’t
24 been anybody that’s come and checked on us either and I don’t have time to run
25 over to the other side and say, oh, P.S. by the way, I haven’t got a lunch yet. It
was, why didn’t you tell us? Well, there you go.” Averett Dep. 224:9-23.; *see*

1 also Alito Decl. ¶ 27, Ex. FF (Plaintiff's Orientation Form Acknowledging
2 review of Policies).

- 3 • "Q. And then when you missed a meal break, what did you do, if anything? A.
4 Well, normally I would just clock a no lunch at the end of the day." Averett
5 Dep. 219:12-15.

6 43. Plaintiff's time records indicate that Plaintiff recorded a missed meal
7 period on 17 shifts and missed breaks on 18 shifts during her employment with
8 Kadlec. *See* Alito Decl. ¶ 19, Ex. S (Plaintiff's Time Detail Records).

9 44. Plaintiff's time records indicate that 45 minutes of additional time was
10 added to Plaintiff's "hours worked" for any shift that Plaintiff attested she had
11 missed a break. *See id.*

12 45. Plaintiff's time records reflect that Plaintiff was paid in full for all
13 working time any shift in which she attested that she did not take an unpaid meal
14 period. *See id.*

15 **E. Plaintiff's Post-Kadlec Job Search**

16 46. Several months after resigning her position at Kadlec, Plaintiff began
17 working with AMN Healthcare, Inc., an employment agency, to find contract work
18 as a travel nurse. Averett Dep. 11:21-12:10.

19 47. As part of the job search process, AMN informed Plaintiff that she
20 needed to provide professional references from the "last two years." Averett Dep.
21 15:12-22.

22 48. Plaintiff provided AMN Healthcare, Inc. with a list of references,
23 which included two former coworkers from Kadlec, Jane Zyph and Amy Gardner.
24 Averett Dep. 15:12-16:6, 23:4-26:20.

25 49. When contacted by AMN, Ms. Zyph evaluated Plaintiff's
26

1 performance in a variety of categories as “does not meet standards,” and stated that
2 she would not “rehire” Plaintiff. *See* Alito Decl. ¶ 7, Ex. F (Professional Reference
3 Form).

4 50. Ms. Zyph testified that her opinion of Plaintiff’s “professional
5 competency” changed based on “incidents that [she] observed.” Deposition of Jane
6 Zyph at 29:19-30:7, 32:10-19, 34:23-36:21.³ For example, Ms. Zyph testified that
7 Plaintiff “misused the emergency light multiple times therefore causing the other
8 nurses to leave their patients,” specifically referencing an incident where Plaintiff
9 “was in [an] isolation room and used the emergency light multiple times for people
10 to bring her items instead of using her Nextel or cell phone for just the call light.”
11 *Id.* at 34:32-36:21.

12 51. When contacted by AMN, Ms. Gardner evaluated Plaintiff’s
13 performance in a variety of categories as “does not meet standards,” and stated that
14 she would not “rehire” Plaintiff. *See* Alito Decl. ¶ 8, Ex. G (Professional Reference
15 Form).

16 52. Ms. Gardner testified that her evaluation of Plaintiff was based on her
17 personal observations and conversations with others in the Birth Center.
18 Deposition of Amy Gardner at 16:24-17:5.⁴ For example, Ms. Gardner testified
19 that she did not believe Plaintiff met standards for professionalism and teamwork,
20 because she observed Plaintiff having “outbursts about assignments at the nurses
21 station,” and refusing “to take care of certain patients.” *Id.*

22
23
24 ³ Cited portions of the Deposition of Jane Zyph are attached to the Declaration of
25 Rosemary Alito as Exhibit C.

26 ⁴ Cited portions of the Deposition of Amy Gardner are attached to the Declaration
of Rosemary Alito as Exhibit D.

1 DATED this 13th day of December, 2024

2 K&L GATES LLP

3
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CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2024, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system, which will send notification of such filing to the persons listed below:

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Dated this 13th day of December, 2024

By: /s/ Benjamin Moore
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